



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

ELP  
Docket No. 4552-00  
8 December 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 December 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 22 October 1987 for four years as a PFC (E-2). The record reflects that you served without incident until 27 July 1988 when you were convicted by general court-martial of operating a passenger car while drunk, an unauthorized absence (UA) from 27 May to 2 June 1988, and wrongful use and possession of amphetamines. You were sentenced to confinement at hard labor for 18 months, total forfeitures, reduction in rank to PVT (E-1), and a dishonorable discharge. The Navy-Marine Corps Court of Military Review affirmed the findings and the sentence on 17 November 1988. The Court of Military Appeals denied your request for review on 2 February 1989.

On 8 May 1989, the Naval Clemency and Parole Board directed that you be afforded an opportunity for 30 days of inpatient treatment at a Veterans Administration hospital prior to discharge. The record reflects that you placed on appellate leave on 8 August 1989 and received a bad conduct discharge on 1 November 1989. The basis for the change from a dishonorable discharge to a bad conduct discharge is not shown in the record. Additionally, the record does not contain a copy of the DD Form 214 that should have been issued to you upon discharge.

In its review of your application, the Board made a careful search of your records for any mitigating factors which might warrant recharacterization of your bad conduct discharge. However, no justification for such a change could be found given the serious nature of the offenses of which you were convicted after only nine months of service.

The Board noted your contentions that you were not guilty of the offenses, the drugs belonged to another individual, you were improperly represented and persuaded to ask for a plea bargain, and your drug test was negative. However, the Board is prohibited by law from reviewing the findings of a court-martial and must restrict its review to determining if the sentence of the court-martial should be reduced as a matter of clemency. In other words, your claims of innocence, that counsel was incompetent or improperly advised you to accept a plea agreement, or that other mistakes of law were made, cannot be considered by the Board because that is the purpose of an appeal. Your contentions relate to evidentiary and procedural matters which were finally and conclusively adjudicated in the court-martial appellate process, and furnish no basis for recharacterization. Your conviction and discharge were effected in accordance with applicable law and regulations, and the discharge appropriately characterizes your service. You have provided neither probative evidence nor a persuasive argument in support of your application. The Board concluded that the discharge was proper and no clemency is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director